

Amendments to the Drawings

Amended Figure 4 illustrates a collapsible container with dash line boxes that diagrammatically represent a hologram and a window.

REMARKS

Applicant appreciates the Examiner's courtesy during a May 10, 2006 telephone inquiry with respect to this application.

Reconsideration of the issues raised in the above referenced Office Action is respectfully solicited.

The objection to added Figure 4 as including new subject matter has been considered. The Office Action indicates that Figure 4 illustrates a window of specific size, shape and location, as well as a hologram of specific size and location. Applicant respectfully traverses this rejection.

In Figure 4, the window 28 and hologram 30 are diagrammatically represented by dashed lines. The dashed lines indicate that the boxes merely explain the use of a window and hologram and do not constitute actual physical dimensions for either a window or a hologram.

While Applicant believes the drawing figure, itself, clearly conveys that elements 28, 30 are not physical representations, but merely diagrammatical representations, the specification has been amended at paragraphs [0055.1], [0075], and new paragraph [0075.1] has been added, to more clearly explain that the dashed lines are merely a diagrammatical representation and do not constitute actual physical dimensions.

If Applicant intended to provide actual physical dimensions for elements 28, 30, a solid line would have been utilized to form the boxes, without explanation as to the purpose thereof.

Further, drawing Figure 4 has been amended to represent the hologram 30 as a rectangle formed with dashed lines, rather than individual letters formed by dashed lines. The drawing more clearly shows that the dashed lines do not represent specific dimensions or shapes of the window or hologram.

Finally, it is a familiar rule that the drawings and the specification may be amended to conform to each other and that

the added matter would not be new matter. *In re Heinle*, 145 USPQ 131, 136.

For the above reasons, entry of the amendments to the specification and Figure 4, along with withdrawal of the objection to the drawings, is respectfully requested.

Moreover, if the Examiner continues to object to the drawing amendments, we are willing to replace Figure 4 with a new Figure 4 represented simply by a diagrammatical box for diagrammatically representing window 28 and a new Figure 5 with a diagrammatical box representing a hologram. Such drawings, however, are not believed necessary in view of amended Figure 4 and the amendments to the specification.

The rejection of Claims 1, 2, 4-10, 12-20, 22-27, 29-31, 33 and 34 under 35 USC §103 as being unpatentable over JP 56-156777 (JP '777) in view of McLaughlin (U.S. Patent No. 6 210 776) and Summons (U.S. Patent No. 4 863 014) has been considered.

As discussed in paragraph [0004] of Applicant's specification, the JP '777 collapsible container can consist of a laminate of stiff paper and of polyethylene applied to both sides thereof. The collapsible container is opaque.

McLaughlin discloses a holographic decorated tube package. Figure 1 of McLaughlin shows a laminate 10 that includes outer layer 12, holographic film layer 14, first inner barrier 16 and second inner barrier 22. The outer layer 12 must be transparent to enable viewing of the holographic film layer 14 therethrough. The laminate 10 forms a tube body 32 that is secured to a tube shoulder 34, which includes an externally threaded exit nozzle 36. There is no disclosure or suggestion that the layers 14, 16 and 22 can be transparent. The holographic effect can be formed on the surface of the film layer 14 wherein the film layer 14 itself is not transparent.

Further, the main embodiment of McLaughlin is directed to a toothpaste type or hair dressing container, which generally does not return to its position after being squeezed to remove

a portion of the stored material. Thus McLaughlin does not disclose a dimensionally collapsible container.

There is no motivation to combine McLaughlin with JP '777 to obtain Applicant's invention. JP '777 is directed to a collapsible container that presumably has dimensional stability and presumably will return to its original shape. The tube package of McLaughlin, however, deforms and tends to remain in the new shape. Further, the toothpaste or hair dressing tube package of McLaughlin has a different use and structure, as the tube package is resealable by a threaded cap. JP '777 instead, has a removable top that does not appear to be recloseable. Therefore, in view of the different uses and physical properties of JP '777 and McLaughlin, there is no motivation to combine the references, except for the purpose of obtaining Applicant's claimed invention.

Summons discloses a transparent building industry product with a collapsible tube. The collapsible container houses a caulking compound. Transparent side walls 50, 52 which face one another, enable or provide a window completely through the container for viewing of the caulking compound so that a consumer can consider how the caulking compound will appear on a substrate upon which it is intended to be placed. As best illustrated in Figures 5 and 6 of Summons, the collapsible tube is not dimensionally stable, but instead can collapse and remain in a collapsed position.

There is no motivation, absent Applicant's specification, to further combine Summons with JP '777 and McLaughlin to obtain Applicant's invention. JP '777 is directed to a collapsible container that presumably has dimensional stability and presumably will return to its original shape. The container of Summons, deforms and remains in a new shape as illustrated therein. Further, Summons is directed to a caulking compound tube package, which has a different use and structure, as the tube package has a mating end cap 22 to permit the resealing of the container after use. JP '777 instead, has a removable top that does not appear to be

reclosable. Therefore, in view of the different uses and physical properties of JP '777 and Summons, there is no motivation to combine the references to obtain Applicant's claimed invention.

Moreover, Summons modifies the container structure of JP '777, which has already been modified by McLaughlin. There is no motivation to first modify the walls of the container of JP '777 with the holographic decoration of McLaughlin, much less then further modify the walls to include a window for viewing of the contents therein as disclosed by Summons.

Further, Applicant's Claims 2, 4-10, 12-20, 22-27, 29-31, 33 and 34 include other features that distinguish the combination of JP '777, McLaughlin and Summons. For example, Applicant's Claim 26 recites that "the print is only visible after at least a part of the food is removed". This feature is not disclosed or suggested in the applied prior art. The Office Action indicates that Claim 26 does not require any structure not present in the references. The Office Action further indicates that it would have been obvious to make the print in such a way that it is only visible after part of the contents is removed. This statement is not understood.

As set forth at Applicant's paragraph [0039], it is possible for the print to become visible only after food has been taken out. This occurs when the print is of a corresponding color as the food contained therein. Thus, a structure is inherently necessary to provide this claimed function. There is no disclosure in the applied prior art of a hologram that has the same color as the material stored in the container in order to provide this effect.

The Office Action at paragraph 16 states that making the print visible is an optimization of a results effective variable and references *In re Boesch*, 205 USPQ 215. Applicant disagrees as the claimed feature is an indication of the presence of contents in the container. This feature provides a yes/no indication and thus is not an optimization of a

result. Therefore the case cited in the Office Action is not relevant with respect to Claim 26.

In view of the above, reconsideration and allowance of independent Claim 1, and Claims 2, 4-10, 12-20, 22-27, 29-31 and 33 dependent therefrom, is respectfully requested.

The rejection of Claim 32 under 35 USC §103 as being unpatentable over JP '777 in view of McLaughlin and Summons as applied to Claim 1, and further in view of Halligan (U.S. Patent No. 4 574 987) has been considered.

Claim 32 is believed allowable for the reasons set forth above with respect to Claim 1.

Halligan discloses combining inner and outer pre-formed cone-shaped members. The members are nested and bonded together at less than 20% of their adjacent surface areas to provide unbonded areas therebetween that function as an insulative heat barrier. One cone-shaped member is made of plastic and another member is made of paper.

There is no motivation to simply modify the paper with polyethylene applied on both sides thereof as disclosed in JP '777 and made transparent by Summons to have first and second cone shaped members that nest as disclosed in Halligan.

Moreover, even if Halligan were properly combined with JP '777 and Summons, which Applicants disagree with, to provide a container with separate elements joined together to provide an insulating effect, the resulting container would lack transparency as Halligan discloses the use of plastic and an opaque paper layer. For the above reasons, reconsideration and allowance of Claim 32 is respectfully requested.

The rejection of Claim 34 under 35 USC §103 as being unpatentable over JP '777 in view of McLaughlin, Summons and Beall (U.S. Patent No. 4 324 338) has been considered.

The rejection states that the prior art includes all of the claimed structure except the lid with a handle projecting outwardly from an edge of the lid.

The rejection relies on Beall, as illustrated in Figure 5 therein, for a lid on a container that has a tab 46 projecting

beyond the edge thereof. The compartmented container of Beall is utilized for administering the sacramental elements during a communion service and is constructed of a durable material that may also be an impact-resistance glass to be able to withstand moderate impact during usage. The container is designed to hold both bread and wine or other substances. A liquid holding compartment is above a storage compartment. The device can be made disposable or constructed for repeat use. There is no disclosure or suggestion that the compartmented container may be in any way collapsible. Instead the container would appear to require a solid structure so that the hinge closure member 16 seats properly and strongly in the lower end portion of the side wall member 22.

There is no motivation, absent Applicant's specification, to consider the compartmented container of Beall, which is not disclosed as being collapsible or even flexible, in order to obtain a lid for the collapsible container of JP '777. Instead, hindsight was required to add the lid to Beall to the combination of JP '777, McLaughlin and Summons.

Further, as discussed above with respect to Claim 1, there is no motivation to combine McLaughlin and Summons with JP '777, much less Beall.

Reconsideration and allowance of Applicant's Claim 34 is respectfully requested.

The rejection of Claim 35 under 35 USC §103 as being unpatentable over JP '777 in view of McLaughlin, Summons and Beall as applied to Claim 34, and further in view of Halligan has been considered.

Claim 35 is believed allowable for the reasons set forth above with respect to Claim 34.

Moreover, as discussed above with respect to Claim 32, substituting the separate elements of Halligan to provide an insulating effect would include at least one opaque paper layer. Thus the transparent function would be destroyed.

For the above reasons, reconsideration and allowance of Claim 35 is respectfully requested.

The Response to Arguments on pages 8 and 9 of the Office Action has been considered.

At paragraph 31, the Office Action states that the container of McLaughlin is not dimensionally stable and that it will not return to essentially its original shape when the force is removed. The Examiner then states that the term "essentially" is a broad term allowing some variation and thus the modified container of JP '777 would have this capability.

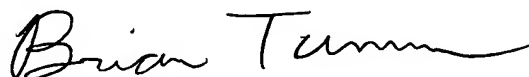
The Examiner's comment with respect to McLaughlin has been considered. McLaughlin, as in Summons, clearly collapses as material is removed therefrom. Applicant's use of the term "essentially" perhaps is not the best descriptor. There is, however, no direct drawing in McLaughlin showing a change in shape of the container. Summons, however, which also comprises a tube body, clearly illustrates the collapsing effect thereof. For the tube container of McLaughlin to function properly, the container must collapse and remain collapsed to prevent air from being trapped within the tube. Trapped air would require additional effort to remove tooth paste therefrom.

In conclusion, Applicant's believe the tube package of McLaughlin, utilized primarily with tooth paste, would have to collapse and remain collapsed to function properly. Therefore, there is no motivation to combine the McLaughlin tube package with JP '777 without destroying the dimensionally stable characteristic of JP '777.

Finally, in paragraph 32 at page 9 of the Office Action, the Office Action states that the JP '777 container and McLaughlin container are both usable with food and have other similarities. Applicant believes the important feature to the container structure is that the "tube" type container of McLaughlin is deformable and collapsible while the opaque collapsible container of JP '777 is dimensionally stable.

Further and favorable reconsideration is respectfully requested.

Respectfully submitted,



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Encl: Drawing Figure 4
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